



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,184	06/30/2006	Una Tucker	2204884-120US1	1165
23483	7590	09/30/2010		
WILMERHALE/BOSTON 60 STATE STREET BOSTON, MA 02109			EXAMINER MATTER, KRISTEN CLARETTE	
			ART UNIT	PAPER NUMBER
			3771	
			NOTIFICATION DATE	DELIVERY MODE
			09/30/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

teresa.carvalho@wilmerhale.com
whipusptopairs@wilmerhale.com

DETAILED ACTION

This Action is in response to the amendment filed 9/7/2010. Claims 1-11 were cancelled and claims 27-31 were added (no claims were amended). Thus, claims 27-31 have been examined on their merits in this Action.

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in the United Kingdom on 12/30/2003. It is noted, however, that applicant has not filed a certified copy of the 0330185.0 application as required by 35 U.S.C. 119(b).

Examiner notes that certified copies of application numbers 0406612.2, 0406613.0, 0406614.8, and 040264634, all filed in the United Kingdom, have been received and placed of record in the file.

Claim Objections

Claims 28, 30, and 31 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 28 and 30 claim "finger rings." However, fingers rings were already claimed in both independent claims 27 and 29 in line 4. Likewise, the "finger holes" of claim 31 seem to be directed to the same structure as the finger rings.

Art Unit: 3771

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 31 recites the limitation of “the finger holes” in line 1. However, finger holes have not been previously introduced in the claim, creating an antecedent basis issue. In addition, as discussed above, the finger holes appear to be the same structure as the finger rings (only in a different embodiment) and thus it is confusing as to whether the device has both finger rings (as required by claim 27) and finger holes (as required by claim 31). Examiner notes that such an embodiment does not seem to be supported by the specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27, 28, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNair (US D233,703) in view of York (US 6,241,696) and Ferrier (US 2,806,470).

Regarding claims 27, 28, and 31, McNair discloses a hand-held self-contained massaging device for body massage, the device comprising: a lower portion forming a hand grip (i.e., the

Art Unit: 3771

top portion seen in Figure 3) that bottom part of the hand grip being convex (see Figure 3); an upper portion forming a unitary arched dome structure (i.e., the bottom part seen in Figure 3) connected to the upper surface of the hand grip, wherein the arched dome member is gradually arched yet sufficiently flattened in nature so as to permit maximum contact with the body receiving the massage from the device (see Figures 2 and 3); and rounded side portions (see Figures 2 and 3) located at each end of the arched dome member; wherein the overall shape of the massaging device is of generally isosceles trapezoid shape (see Figure 3).

From the figures of McNair it appears as though the arched dome member is slightly longer than the hand grip (i.e., the slot where fingers are inserted). However, to the extent that the length is unclear and not verbally discussed in McNair, examiner cites York as teaching a similar hand-held massager that has a lower portion hand grip (3) and an upper portion arched dome member (1a), the arched dome member having a longer length than the hand grip (see Figure 2) and having a generally isosceles trapezoid shape overall. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the dimensions of McNair to have an arched dome member that is longer than the hand grip as taught by York in order to provide a larger massage surface area. Such a modification would appear to involve a mere change in dimension that does not patentably distinguish an invention over the prior art.

McNair lacks finger rings/holes (i.e., McNair discloses a single slot for fingers). However, finger rings are well known in the art for allowing a user to grasp a manual massaging instrument as demonstrated by Ferrier (see Figure 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have replaced the finger slot

Art Unit: 3771

of McNair with finger rings as taught by Ferrier in order to provide a better gripping area that would also help more with lateral pressure. Such a modification appears to involve the mere substitution of one well known finger grip means for another to produce predictable results that do not patentably distinguish an invention over the prior art.

Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNair (US D233,703) in view of York (US 6,241,696), Ferrier (US 2,806,470), and Back (US D408,543).

Regarding claims 29 and 30, McNair discloses a hand-held self-contained massaging device for body massage, the device comprising: a lower portion forming a hand grip (i.e., the top portion seen in Figure 3); an upper portion forming a unitary arched dome structure (i.e., the bottom part seen in Figure 3) connected to the upper surface of the hand grip, wherein the arched dome member is gradually arched yet sufficiently flattened in nature so as to permit maximum contact with the body receiving the massage from the device (see Figures 2 and 3); and rounded side portions (see Figures 2 and 3) located at each end of the arched dome member; wherein the overall shape of the massaging device is of generally isosceles trapezoid shape (see Figure 3).

From the figures of McNair it appears as though the arched dome member is slightly longer than the hand grip (i.e., the slot where fingers are inserted). However, to the extent that the length is unclear and not verbally discussed in McNair, examiner cites York as teaching a similar hand-held massager that has a lower portion hand grip (3) and an upper portion arched dome member (1a), the arched dome member having a longer length than the hand grip (see

Art Unit: 3771

Figure 2) and having a generally isosceles trapezoid shape overall. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the dimensions of McNair to have an arched dome member that is longer than the hand grip as taught by York in order to provide a larger massage surface area. Such a modification would appear to involve a mere change in dimension that does not patentably distinguish an invention over the prior art.

McNair lacks finger rings/holes (i.e., McNair discloses a single slot for fingers). However, finger rings are well known in the art for allowing a user to grasp a manual massaging instrument as demonstrated by Ferrier (see Figure 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have replaced the finger slot of McNair with finger rings as taught by Ferrier in order to provide a better gripping area that would also help more with lateral pressure. Such a modification appears to involve the mere substitution of one well known finger grip means for another to produce predictable results that do not patentably distinguish an invention over the prior art.

The bottom part of the hand grip of McNair is convex and thus McNair lacks a concave bottom part. However, Back discloses a hand-held massager with a hand grip having a concave bottom part (see Figure 7). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the bottom part of McNair's hand grip concave as taught by Back in order to increase comfort for a user pushing on the grip, for example.

Response to Arguments

Applicant's arguments with respect to claims 27-31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. MATTER whose telephone number is (571)272-5270. The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3771

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven O. Douglas/
Primary Examiner, Art Unit 3771

/Kristen C. Matter/
Examiner, Art Unit 3771